UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

| | | SAVINGS BANK and MORTGAGE CORPORATION | | |
|---------|--------------|--|--|----|
| vs. | | Plaintiffs, |)) Civil Action No. 07 CIV 8065 | |
| INC.; I | FAST STEV | L SETTLEMENT AGENCY, TTRACK TITLE AGENCY VEN M. LEFF; RACHEL M. RICHARD A. LEFF, |)))) | |
| | | Defendants. | ,) | |
| | | TABLE OF C | CONTENTS | |
| INTRO | DUC | CTION | | 1 |
| ARGU | MEN | TT | | 2 |
| I. | | der Supreme Court Precedent, Plaintif eause They Cannot Plausibly State A | fs' Claim Should Be Dismissed Claim Against Fast Track | 2 |
| | A. | This Court and the Second Circuit A Plausibility Standard | Apply Bell Atlantic's | 3 |
| | B. | | t Bell Atlantic's Plausibility Pleading st Cases | 5 |
| II. | | intiffs' Bare, Conclusory Allegations Fast Track Under An Alter Ego Theo | Are Insufficient To Impose Liability | 5 |
| III. | The | Individual Claims In Plaintiffs' Ame | ended Complaint Must Be Dismissed | 8 |
| | A. | Plaintiffs' Breach of Contract Claim | Is Inadequate | 9 |
| | B. | Plaintiffs' Conversion Claim Is Dup | licative of Their Contract Claim | 9 |
| | C. | Plaintiffs' Breach of Fiduciary Duty | Claim Is Inadequate | 10 |
| | D. | Plaintiff's Fraud Claim Must Be Dis | smissed | 11 |
| | E. | Plaintiffs' Negligence Claim Canno | t Survive | 11 |
| | F. | Plaintiffs' Unjust Enrichment Claim | Is Insufficient | 11 |

| | G. | Plaintiffs' | Claim For Money Had And Received Must Be Dismissed | 11 |
|-------|------|-------------|--|----|
| CONCL | JISI | ON | | 11 |

TABLE OF AUTHORITIES

| <u>CASES</u> | Page |
|---|--------|
| Airlines Reporting Corp. v. Aero Voyagers, Inc., 721 F. Supp. 579 (S.D.N.Y. 1989) | 10 |
| Arias v. U.S., No. 05 Civ. 1049, 2007 WL 4157152 (S.D.N.Y. Nov. 15, 2007) | 4 |
| Arista Records LLC v. Lime Group LLC, No. 06 Civ. 5936, 2007 WL 4267190, at *4 (S.D.N.Y. Dec. 3, 2007) | 4 |
| ATSI Communications, Inc. v. Shaar Fund, Ltd., 493 F.3d 87 (2d Cit. 2007) | 3, 5 |
| Bell Atlantic Corp. v. Twombley, 127 S. Ct. 1955 (May 21, 2007) | passim |
| Bender v. Gen. Services Admin., No. Civ. 6459, 2008 WL 619035 (S.D.N.Y. March 5, 2008) | 3, 4 |
| Camofi Master LDC v. College Partnership, 452 F. Supp. 2d 462 (S.D.N.Y. 2006) | 6 |
| Command Cinema Corp. v. VCA Labs, Inc., 464 F. Supp. 2d 191 (S.D.N.Y. 2006) | 9 |
| Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99 (1957) | 2, 3 |
| Crowley v. Visionmaker, LLC, 512 F. Supp. 2d 144 (S.D.N.Y. 2007) | 4 |
| CVC Claims Litig. LLC v. Citicorp Venture Capital Ltd., No. 03 Civ. 7936, 2007 WL 2915181 (S.D.N.Y. Oct. 3, 2007) | 4, 6 |
| D'Antonio v. Metro. Transp. Auth., No. 06 cv 4238, 2008 WL 582354 (S.D.N.Y. March 4, 2008) | 4, 6 |
| DiVittorio v. Equidyne Extractive Indus., Inc., 822 F.2d 1242 (2d Cir. 1987) | 10 |
| Erickson v. Pardus, 127 S. Ct. 2197 (2007) | 4, 5 |

| Goldstein v. Pataki, No. 07-2537-cv, 2008 WL 269100 (2d Cir. Feb. 1, 2008) | 2 |
|---|----------|
| Iqbal v. Hasty, 490 F.3d 143 (2d Cir. 2007) | 2, 5 |
| Kwan v. Schlein, 246 F.R.D. 447 (S.D.N.Y. 2007) | 8, 9 |
| Local 812 GIPA v. Canada Dry Bottling Co. of New York, 1999 WL 301692 (S.D.N.Y. 1999) | 7, 8 |
| Mabry v. New York City Dept. of Corrections, No. 05 Civ. 8133, 2008 WL 619003 (S.D.N.Y. March 7, 2008) | 3 |
| Nationwide Cellular Service, Inc. v. Am. Mobile, 1991 WL 233284 (S.D.N.Y. 1991) | 10 |
| Old Republic Insurance Co. v. Hansa World Cargo Serv., Inc., 170 F.R.D. 361 (S.D.N.Y. 1997) | 7, 8, 10 |
| Patane v. Clark, 508 F.3d 106 (2d Cir. 2007) | 2, 3 |
| Richards v. AXA Equitable Life Ins. Co., No. 06 Civ. 4744, 2007 WL 3084968 (S.D.N.Y. Oct. 22, 2007) | 6 |
| Ruotolo v. New York, 514 F.3d 184 (2d Cir. 2008) | 2 |
| Russian Standard Vodka, Inc. v. Allied Domeco Spirits & Wine USA, Inc., 523 F. Supp. 2d 376 (S.D.N.Y. 2007) | 4 |